

# STATE OF NEW YORK

8883

## IN ASSEMBLY

January 19, 2022

Introduced by M. of A. KELLES -- read once and referred to the Committee on Housing

AN ACT to amend the public housing law, in relation to low or moderate income housing projects

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public housing law is amended by adding a new section 14-a to read as follows:

§ 14-a. Low or moderate income housing projects. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Low or moderate income housing" means any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit organization or limited dividend organization. For a housing project to qualify as "low or moderate income housing", such housing project shall: (i) have at least twenty-five percent of such housing project's units be affordable to households who earn no more than eighty percent of the area median income; or (ii) for rental housing projects, have at least twenty percent of such housing project's units affordable to households earning below fifty percent of the area median income.

(b) "Uneconomic" means any condition brought about by any single factor or combination of factors to the extent that it makes it substantially unlikely for a public agency or nonprofit organization to proceed in building or operating low or moderate income housing without financial loss, or for a limited dividend organization to proceed and still realize a reasonable return in building or operating such housing within the limitations set by the subsidizing agency of government on the size or character of the development or on the amount or nature of the subsidy or on the tenants, rentals and income permissible, and without substantially changing the rent levels and units sizes proposed by the public agency, nonprofit organization, or limited dividend organization.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 (c) "Consistent with local needs" means requirements and/or regu-  
2 lations that are reasonable in view of the regional need for low and  
3 moderate income housing and the need to protect the health or safety of  
4 the occupants of the proposed housing or of the residents of the city,  
5 town, or village to promote better site and building design in relation  
6 to the surroundings, or to preserve environmentally protected wetlands,  
7 and if such requirements and/or regulations are applied as equally as  
8 possible to both subsidized and unsubsidized housing. Requirements  
9 and/or regulations shall be "consistent with local needs" when imposed  
10 by a local zoning board of appeals after comprehensive hearing in a  
11 city, town, or village where low or moderate income housing exists which  
12 is in excess of ten percent of the housing units reported in the latest  
13 federal decennial census of the city, town, or village, or in the case  
14 of the city of New York, which is in excess of ten percent of the hous-  
15 ing units in the area covered by the applicable community board.

16 (d) "Local board" means any city, town, or village board, commission,  
17 officer or other agency or office having supervision of the construction  
18 of buildings or the power of enforcing municipal building laws.

19 (e) "Local zoning board of appeals" means a zoning board of appeals  
20 for a city, town, or village operating pursuant to article five-A of the  
21 general city law, section two hundred sixty-seven of the town law, or  
22 section 7-712 of the village law, or the New York city board of stand-  
23 ards and appeals.

24 (f) "State zoning board of appeals" or "state board" means the state  
25 zoning board of appeals established pursuant to subdivision five of this  
26 section.

27 (g) "Limited-dividend organization" means a limited-dividend housing  
28 company established under article four of the private housing finance  
29 law.

30 (h) "Public agency" shall mean any city, town, village or state  
31 government body or subdivision thereof.

32 (i) "Nonprofit organization" shall mean a corporation having tax  
33 exempt status under section 501 (c) (3) of the United States Internal  
34 Revenue Code.

35 (j) "Division" shall mean the division of housing and community  
36 renewal.

37 2. Applying to local zoning boards of appeals. Any public agency,  
38 limited-dividend organization, or nonprofit organization proposing to  
39 build low or moderate income housing may submit to the applicable local  
40 zoning board of appeals, a single application to build such housing in  
41 lieu of separate applications to the applicable local boards. The local  
42 zoning board of appeals shall forthwith notify each such local board, as  
43 applicable, of the filing of such application by sending a copy of such  
44 application to such local boards for their recommendations and shall,  
45 within thirty days of the receipt of such application, hold a public  
46 hearing on the same. The local zoning board of appeals shall request the  
47 appearance at such hearing of such representatives of such local boards  
48 as it shall deem necessary or helpful in making its decision upon such  
49 application and shall have the same power to issue permits or approvals  
50 as any local board or official who would otherwise act with respect to  
51 such application, including but not limited to the power to attach to  
52 such permit or approval conditions and requirements with respect to  
53 height, site plan, size or shape, or building materials as are consist-  
54 ent with the terms of this section. The local zoning board of appeals,  
55 in making its decision on such application, shall take into consider-  
56 ation the recommendations of the local boards and shall have the author-

1 ity to use the testimony of consultants. The local zoning board of  
2 appeals shall adopt rules, not inconsistent with the purposes of this  
3 section, for the conduct of its business pursuant to this section and  
4 shall file a copy of such rules with the city, town, or village clerk.  
5 The local zoning board of appeals shall render a decision, based upon a  
6 majority vote of such board, within forty days after the termination of  
7 the public hearing held pursuant to this subdivision and, if favorable  
8 to the applicant, shall forthwith issue a comprehensive permit or  
9 approval. If such hearing is not convened or a decision is not rendered  
10 within the time allowed, unless the time has been extended by mutual  
11 agreement between the local zoning board of appeals and the applicant,  
12 the application shall be deemed to have been allowed and the comprehen-  
13 sive permit or approval shall be issued. Any person aggrieved by the  
14 issuance of a comprehensive permit or approval may appeal to the court  
15 as provided in article seventy-eight of the civil practice law and  
16 rules.

17 3. Right to appeal to the state board. Whenever an application filed  
18 under subdivision two of this section is denied, or is granted with such  
19 conditions and requirements as to make the building or operation of such  
20 housing uneconomic, the applicant shall have the right to appeal to the  
21 state board for a review of the same. Such appeal shall be taken within  
22 twenty days after the date of the notice of the decision by the local  
23 zoning board of appeals by filing with the state board a statement of  
24 the prior proceedings and the reasons upon which such appeal is based.  
25 The state board shall notify the appropriate local zoning board of  
26 appeals of the filing of such petition for review and such local zoning  
27 board of appeals shall, within ten days of the receipt of such notice,  
28 transmit a copy of its decision and the reasons therefor to the state  
29 board. Such appeal shall be heard by the state board within twenty days  
30 after receipt of the applicant's statement. A stenographic record of the  
31 proceedings shall be kept and the state board shall render a written  
32 decision, based upon a majority vote, stating its findings of fact, its  
33 conclusions and the reasons therefor within thirty days after the termi-  
34 nation of the hearing, unless such time shall have been extended by  
35 mutual agreement between the state board and the applicant. Such deci-  
36 sion may be reviewed by the supreme court in accordance with the  
37 provisions of the state administrative procedure act. The state board  
38 shall deny an appeal of an application to build low or moderate income  
39 housing under this subdivision if the city, town, or village where such  
40 low or moderate income housing would be built has otherwise increased  
41 its proportion of overall housing that is affordable to households earn-  
42 ing below fifty percent of the area's median income by two percent or  
43 more in the previous year.

44 4. State board hearings. (a) A hearing by the state board under  
45 subdivision three of this section shall be limited to the issue of  
46 whether, in the case of the denial of an application, the decision of  
47 the local zoning board of appeals was reasonable and consistent with  
48 local needs and, in the case of an approval of an application with  
49 conditions and requirements imposed, whether such conditions and  
50 requirements make the construction or operation of such housing uneco-  
51 nomical and whether they are consistent with local needs. If the state  
52 board finds, in the case of a denial, that the decision of the local  
53 zoning board of appeals was unreasonable and not consistent with local  
54 needs, it shall vacate such decision and shall direct such local zoning  
55 board of appeals to issue a comprehensive permit or approval to the  
56 applicant. If the state board finds, in the case of an approval with

1 conditions and requirements imposed, that the decision of the local  
2 zoning board of appeals makes the building or operation of such housing  
3 uneconomic and is not consistent with local needs, it shall order such  
4 local zoning board of appeals to modify or remove any such condition or  
5 requirement so as to make the proposal no longer uneconomic and to issue  
6 any necessary permit or approval; provided, however, that the state  
7 board shall not issue any order that would permit the building or opera-  
8 tion of such housing in accordance with standards less safe than the  
9 applicable building and site plan requirements of the federal housing  
10 administration or any applicable state requirements, whichever agency is  
11 financially assisting such housing. Decisions or conditions and require-  
12 ments imposed by a local zoning board of appeals that are consistent  
13 with local needs shall not be vacated, modified or removed by the state  
14 board notwithstanding that such decisions or conditions and requirements  
15 have the effect of making the applicant's proposal uneconomic.

16 (b) The state board or the petitioner shall have the power to enforce  
17 the orders of the state board at law or in equity in court. The local  
18 zoning board of appeals shall carry out the order of the state board  
19 within thirty days of its entry and, upon failure to do so, the order of  
20 the state board shall, for all purposes, be deemed to be the action of  
21 such local zoning board of appeals, unless the petitioner consents to a  
22 different decision or order by such local zoning board of appeals.

23 5. State zoning board of appeals established. (a) There is hereby  
24 established, within the division, a state zoning board of appeals, to  
25 effectuate the provisions of this section.

26 (b) The state board shall consist of three members, one of whom shall  
27 be the commissioner of the division or such commissioner's designee, one  
28 of whom shall be appointed by the governor and who shall have experience  
29 in affordable housing development, and one of whom shall be appointed by  
30 the governor and who shall have experience in local government.

31 (c) The state board shall have the power and duties to conduct hear-  
32 ings, issue orders, and otherwise perform any function necessary to  
33 operate in conformity with the provisions of this section. In addition  
34 to the functions or duties specifically directed or authorized pursuant  
35 to this section, the state board shall have any powers or duties  
36 directed or authorized by the division.

37 6. Rules and regulations. The division shall be authorized to promul-  
38 gate any rules and/or regulations necessary for the implementation of  
39 the provisions of this section.

40 § 2. The division shall conduct a study regarding the qualified allo-  
41 cation plan for low income housing tax credits developed pursuant to  
42 section 42 of the Internal Revenue Code. Such study shall include, but  
43 not be limited to, the development of a new qualified action plan pursu-  
44 ant to section 42 of the Internal Revenue Code, under which a public  
45 agency, limited dividend organization, or nonprofit organization submit-  
46 ting an application to build low or moderate income housing under subdivi-  
47 sion 2 of section 14-a of the public housing law that would otherwise  
48 qualify for a low income housing tax credit under section 42 of the  
49 Internal Revenue Code, may include with such application, an application  
50 for such low income housing tax credit. Such qualified action plan shall  
51 grant local zoning boards of appeals the authority to approve or deny  
52 such an application for low income housing tax credits. Under such qual-  
53 ified action plan, a denial of an application for low income housing tax  
54 credits shall be appealable to the state board in the same manner as an  
55 application to build low or moderate income housing under section 14-a  
56 of the public housing law. Such study shall include a review of the

1 potential benefits and effects of such new qualified action plan. The  
2 commissioner shall submit a report of the division's findings of such  
3 study and any recommendations to the governor, the speaker of the assem-  
4 bly and the temporary president of the senate on or before one year  
5 after the effective date of this act.

6 § 3. This act shall take effect on the one hundred eightieth day after  
7 it shall have become a law. Effective immediately, the addition, amend-  
8 ment and/or repeal of any rule or regulation necessary for the implemen-  
9 tation of this act on its effective date are authorized to be made and  
10 completed on or before such date.